

necessary that this Court should be convinced either that the judge acted upon some wrong principle of law, or that the amount awarded was so extremely high or so very small as to make it, in the judgment of this Court, an entirely erroneous estimate of the damage to which the plaintiff is entitled."

In the case of *G. C. Dobell & Co. Ltd. v. Barber & Garratt*⁽²⁾, it was held by Scrutton and Lawrence L.JJ. that the plaintiffs in an action for breach of statutory warranty were entitled to include in their damages the amounts they were liable to pay to their sub-purchasers.

Mr. Lim has suggested that at the close of the case before the trial Judge there should have been a further hearing to determine the amount of the damages. I cannot think why, and the suggestion appears to me to be fantastic. The plaintiffs claim \$12,486.62, and although the defendants in their written defence stated that they did not admit various allegations contained in the statement of claim, they did not specifically deny that the plaintiffs were entitled to the amount of the claim and, as I have already stated, no argument was put before the learned trial Judge in regard to the amount of damages to which the plaintiffs were entitled.

The measure of damages, in my opinion, is laid down in section 53, sub-section (3) of the Sale of Goods Act, 1893, and that is the difference between the value of the goods at the time of delivery to the buyer and the value they would have had if they answered to the warranty. In my view, the beans at the time they were delivered to the respondents had no value. I think the beans were undoubtedly poisonous, both for pigs and for human consumption. The statement made to the respondents that the beans were good for pig fodder meant that they were good in the condition that they were sold and, in my view, there was no obligation upon the respondents to make exhaustive enquiries as to whether the beans could be made good for pig fodder or human consumption if treated in a certain way. There is no evidence that this was generally known in Penang. It may be that if exhaustive enquiries were made it would be found that even in their condition as delivered they might have been used for some purpose and might have had some value. It was suggested in evidence that the indigestible portion of the beans is valuable as manure. That is the evidence of an expert, the Settlement Agricultural Officer, Penang. He did not say that the beans would have any value as manure in Penang, or were saleable as such.

I would dismiss this appeal with costs.

Appeal dismissed.

Solicitors: *Hogan, Adams & Allan; Lim, Lim & Oon.*

M. RAMAN v. AYAVOO

[A. Cr. J. (Rigby J.) July 25, 1956]

[Penang — Criminal Appeal No. 2 of 1956]

Criminal Procedure Code (S.S. Cap. 21), s. 295 — Plea of autrefois convict — Whether conviction on a charge of disorderly behaviour in public a bar to a charge of voluntarily causing hurt.

This was an appeal against the conviction of the accused on a charge of voluntarily causing hurt. The substantial ground of appeal was one of *autrefois convict*. It appeared that some two months previously, both the complainant and the appellant, on the very facts which gave rise to the charge in the summons for voluntarily causing hurt, were jointly charged under section 21 of the Minor Offences Ordinance, with disorderly behaviour in a public place.

Held: (1) it is not enough on a plea of *autrefois convict* to say that the evidence rendered on the second charge was the same as that offered to prove the first charge. It is not the evidence which is essential to the charge that governs the plea but the offence which is charged;

(2) the offence of voluntarily causing hurt is a different offence and a more serious offence than the simple charge of disorderly behaviour in public and a conviction on the original charge of disorderly behaviour would not necessarily involve a conviction on the latter charge of voluntarily causing hurt;

(3) the plea of *autrefois convict* therefore has no substance and must be dismissed.

Cases referred to:—

- (1) *R. v. Kendrick & Smith* 23 Cr. App. R. 1.
- (2) *Public Prosecutor v. Surjan Singh* (1939) M.L.J. 109.

MAGISTRATE'S CRIMINAL APPEAL.

M. Abraham for the appellant.

Chew Choon Poon for the respondent.

Rigby J. : — The appellant in this case pleaded guilty to a private Summons preferred against him by the complainant charging him with assault contrary to section 323 of the Penal Code.

He was fined \$25, ordered to pay \$50 compensation to the complainant, and bound over to keep the peace for six months.

It would appear that some two months previously both the complainant and the appellant, on the very facts which gave rise to the charge in the private Summons to which the appellant pleaded guilty, were jointly charged under section 21 of the Minor Offences Ordinance, with disorderly behaviour in a public place. The evidence advanced in support of that charge was simply that they were both seen fighting together in a public place. The record of that case, which I have now had an opportunity of perusing, is unsatisfactory and I have, by way of revision proceedings, quashed the order made thereon. However, I propose to consider the appeal now before me on the basis that the appellant

was convicted on that charge preferred against him in the Minor Offences Ordinance.

The substantial ground of appeal before me is now *autrefois convict*. The plea of *autrefois convict* is really a plea in Bar to trial and should be raised before pleading to the charge. However, the appellant was unrepresented at the trial. I may say that the Magistrate, when accepting the appellant's plea of guilty to the charge, was totally unaware of the earlier case under the Minor Offences Ordinance, the facts of which were never brought to his notice. In my view, the plea of *autrefois convict* now raised has no substance and must be dismissed. It is quite clear that, to enable an accused person to rely on that plea, the offence with which he is charged on the second occasion must be the same offence, or practically the same offence, as that with which he was charged on the first occasion. It is not enough to say that the evidence tendered on the second charge was the same evidence as that offered to prove the first charge. It is not the evidence which is material to the charge that governs the plea, but the offence which is charged. (*Kendrick and Smith*⁽¹⁾). The offence of voluntarily causing hurt, quite clearly, is a different offence and a more serious offence than the simple charge of disorderly behaviour in a public place; the latter offence being established by the simple fact of two persons brawling in public. As Swift J. delivering the judgment in the case of *Kendrick and Smith*⁽¹⁾ pointed out:—

"It may well be that the evidence before the Court shows that both these offences have been committed, but that does not make them the same offence They are quite distinct and separate."

Again, as Aitken J. pointed out in the case of *Public Prosecutor v. Surjan Singh*⁽²⁾, in considering the plea of *autrefois quit*:—

"The test is, rather, whether an acquittal on the first charge necessarily involves an acquittal on the second charge; and that is obviously not the case here as the ingredients of these two offences differ considerably from one another, and evidence which would establish the commission of one of them would not necessarily establish the other.

By analogy, the words "*autrefois convict*" may be substituted for the words "*autrefois acquit*", and the same argument applied. In applying that test to the facts of the case now before me it is abundantly clear that a conviction on the original charge of disorderly behaviour would not necessarily involve a conviction on the later charge of voluntarily causing hurt. The ingredients of the two offences differ considerably from one another, and evidence which would establish the commission of the offence of disorderly behaviour would not necessarily establish the offence of voluntarily causing hurt, or *vice versa*.

There is, in my view, a further aspect of the matter which requires consideration. The original charge of disorderly behaviour was brought by the Police. I suppose that a policeman saw the complainant and the appellant fighting or brawling and, without troubling to consider which of the two was at fault, charged them both. It seems to me that it would be a complete denial of justice if, in fact, one of the two parties was innocent and, simply because of the original charge of disorderly behaviour brought against them both, he should be precluded from his undoubted right to apply by way of complaint to the Magistrate for a Summons to issue against the other party, who had caused him injury in an assault in which he was in no way to blame.

For these reasons the appeal is dismissed as against conviction. I see no reason to interfere with the sentence and the appeal against sentence is also accordingly dismissed.

Appeal dismissed.

HENG HWANG KONG v. PUBLIC PROSECUTOR

[A. Cr. J. (Hill J.) August 4, 1956]

[Alor Star—Criminal Appeal No. 32 of 1956]

Dangerous Drugs Ordinance, 1952, s. 30(2) — Forfeiture of lorry — Onus on owner of lorry to shew that offence was committed without his knowledge, consent or connivance.

In this case the appellant appealed against the order of the President of the Sessions Court by which the appellant's lorry was forfeited under section 30(2) of the Dangerous Drugs Ordinance, 1952. It was argued that it was necessary to establish some degree of complicity on the part of the owner of a vehicle before the forfeiture of the vehicle can be ordered.

Held: (1) under section 30(2) of the Dangerous Drugs Ordinance, 1952 it is not incumbent on the prosecution to prove complicity on the part of the owner;

(2) in order to avoid forfeiture the owner must prove to the satisfaction of the Court that the offence was committed without his knowledge, consent or connivance and as the appellant in this case had failed to discharge the onus on him, the order for forfeiture was rightly made.

Case referred to:—

- (1) *Public Prosecutor v. Lim Geok Ching & Anor.* (1949) M.L.J. 154.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Thean-Chu for the appellant.

B. Sheldon (Federal Counsel) for the respondent.

Hill J.: — This is an appeal against an order of the Acting President of the Sessions Court by which the appellant's lorry was forfeited under section 30(2) of the Dangerous Drugs Ordinance, No. 30 of 1952.